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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

McCRAW *v.* VERNON *et al.*

Sept. 15, 1910.

[68 S. E. 979.]

Insurance (§ 594*)—Assignment of Benefits.—The assignment by deceased's sister of the benefit of his life policy to his wife, which stated that she relinquished all her interest and claims to it, amounted no only to an assignment, but a relinquishment of all her interest, though the wife's name was omitted, and, it being shown that she was the intended assignee, equity would supply her name.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. § 1457; Dec. Dig. § 594.* 9 Va.-W. Va. Enc. Dig. 347, *et seq.*]

Appeal from Corporation Court of Radford.

Suit by Nannie McCraw against Rena Vernon and another. Decree for defendant Vernon, and plaintiff appeals. Reversed and remanded.

BARNES *et al. v.* CROCKETT'S ADM'R.

Sept. 15, 1910.

[68 S. E. 983.]

1. Novation (§ 4*)—Intention.—Whether the taking of a new security of equal dignity is to be treated as a novation is a matter of intention, to be determined from all the facts and circumstances.

[Ed. Note.—For other cases, see Novation, Cent. Dig. § 4; Dec. Dig. § 4.* 10 Va. W. Va. Enc. Dig. 495; see also, 14 *id.* 786.

2. Novation (§ 4*)—What Constitutes.—Where land was deeded to brothers on condition that they pay a certain sum to their sisters, for which there should be a lien on the land, a release of the lien and the taking, in lieu thereof of the brothers' bonds for the amount due not only released the lien, but merged the brothers' implied contract under the deed into an express promise to pay under seal.

[Ed. Note.—For other cases, see Novation, Cent. Dig. § 4; Dec. Dig. § 4.* 9 Va.-W. Va. Enc. Dig. 785, *et seq.*; see also, 10 *id.* 497.]

3. Deeds (§ 157*)—Conditions—As Creating Implied Contract.—Though the grantees in a deed containing a condition that they should

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

pay a certain sum to third persons were not expressly bound by the condition since they had not sealed the deed, yet, having accepted it, they were bound by an implied promise to pay the sum, for which an assumpsit would lie.

[Ed. Note.—For other cases, see Deeds, Dec. Dig. § 157.* 4 Va.-W. Va. Enc. Dig. 439, et seq.]

4. Novation (§ 4*)—Effect.—The parties being the same, the giving and acceptance of a bond for the payment of money due by simple contract extinguishes the simple contract liability.

[Ed. Note.—For other cases, see Novation, Cent. Dig. § 4; Dec. Dig. § 4.* 9 Va.-W. Va. Enc. Dig. 497.]

5. Appeal and Error (§ 1056*)—Exclusion of Evidence—Harmless Error.—Where a deed contained a condition that the grantees should pay a certain sum to third persons, and such third persons discharged the condition by accepting the bonds of the grantees, and an action was brought on the bonds, the refusal of evidence offered by the grantees, that in the bond transaction there was nothing said in regard to the effect it should have on the rights and liabilities under the deed, if error, was not prejudicial.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4187-4193; Dec. Dig. § 1056.* 1 Va.-W. Va. Enc. Dig. 581, et seq., 595.]

6. Appeal and Error (§ 1050*)—Evidence—Grounds for Reversal.—The erroneous admission of evidence which cannot prejudice the party complaining is not ground for reversal.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4153-4160; Dec. Dig. § 1050.* 1 Va.-W. Va. Enc. Dig. 592, et seq.]

7. Appeal and Error (§ 1068*)—Instructions—Prejudicial Error.—Where the jury could not have found any other verdict than that rendered, error in giving or refusing instructions is not ground for reversal.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4227; Dec. Dig. § 1068.* 1 Va.-W. Va. Enc. Dig. 600, et seq.]

Appeal from Circuit Court, Tazewell County.

Action by Crockett's administrator against W. A. Barnes and others. Judgment for plaintiff, and defendants bring error. Affirmed.

BACHRACH *v.* BACHRACH.

Sept. 15, 1910.

[68 S. E. 985.]

1. Mortgages (§ 37*)—Absolute Deed as Mortgage—Oral Evidence—Admissibility.—A deed absolute on its face may be shown

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.